the sale of land, on which he received earnest money, left the state. Defendant, who was the joint occupant of his office, but had no other connection with him or with the transaction, found among his papers an envelope containing a certificate of deposit representing the earnest money, which had been indorsed in blank by the agent. Defendant deposited this on his own account, and held it subject to the agent's order. *Held,* that in an action by the purchaser to recover his earnest money on failure to complete the sale, the act of defendant in placing the money in his own bank account would not make him liable therefor to the purchaser.

Although *indebitatus assumpsit* for money had and received is one of the common courts, 2 *Harv. Law Rev.* 1, it is also well settled that the action for money had and received is an equitable one, governed by equitable principles. *Law v. Uhrlaub,* 104 Ill. App. 263. Hence the action may be maintained whenever one has money which in equity and good conscience belongs to another. *Hudson v. Scott,* 125 Ala. 172. And so when bank and treasury notes are received as money, an action for money had and received will lie as though the money itself had been received. *Mason v. Waite,* 17 Mass. 560. *Contra, Lindeman v. Lindeman,* 2 J. J. Marshall (Ky.) 597. But in order to support the action there must be some privity existing between the parties in regard to the money sought to be recovered. *Vrauex v. Ross,* 98 Mass. 591. The privity may, however, be express, as when the defendant has received money as agent for the plaintiff, or it may be implied, as when the defendant has come into possession *male fide* or on a consideration which has failed. *Sargent v Stryker,* 16 N. J. L. 464.

MUNICIPAL CORPORATIONS—USE OF STREETS—CONTRIBUTORY NEGLIGENCE.—BRADLEY V. JAECKEL, 119 N. Y. SUPP. 1071.—*Held,* that it is not contributory negligence as a matter of law for a person about to cross a street to fail to look for automobiles approaching on the wrong side of the street, as it is the duty of the driver, when on the wrong side of the street, to either give a signal of warning to any pedestrian attempting to cross or to have his car under such control that injury could not be caused to such pedestrian. Lehman, J., *dissenting.*

Contributory negligence on the part of the plaintiff is generally a question of fact for the jury to decide. *Murphy v. Armstrong Transfer Co.,* 167 Mass. 199; *Sondheim v. Nassau Brewing Co.,* 60 N. Y. App. Div. 463. And what constitutes contributory negligence as a matter of law is largely determined by the particular circumstances of each case. *Dennison v. North Penn. Iron Co.,* 22 Pa. Super. Ct. 219. Thus, where plaintiff, just as he stepped from the curb onto a street crossing, was struck and injured by defendant's wagon, there being nothing in the way to prevent him from seeing the wagon before he stepped, if he had looked, he was held guilty of contributory negligence. *Harris v. Commercial Ice Co.,* 153 Pa. 278. While foot passengers and those driving in carriages have equal rights in the streets of a city and both are required to exercise that degree of care and prudence which the circumstances of the case demand.

Brooks v. Schwerin, 54 N. Y. 343. In a case analogous to the case under discussion, it was held not to be negligence as a matter of law to cross a street without looking both ways for approaching vehicles. *Reens v. Mail & Express Pub. Co.,* 62 N. Y. St. 511. And the same degree of diligence is not required of a person about to cross a public street as would be required at a railroad crossing. *Eaton v. Cripps,* 94 Iowa, 176. Nor was it held negligent where plaintiff did not take special precaution against the reckless conduct of defendant in riding at an unusual rate of speed in a public street, resulting in her injury. *Stringer v. Frost,* 116 Ind. 477.

BILLS AND NOTES—CONSIDERATION—MISREPRESENTATIONS—NATIONAL BANK OF COMMERCE OF KANSAS CITY, MO., V. ROCKEFELLER, 174 FED. 22.—Where a guarantor of an indebtedness from a corporation to a bank in settling his liability to the bank after the corporation became insolvent, accepted the representations of the bank, implied, if not expressed, that a note of the corporation then held by the bank represented an indebtedness which was all within the guarantee, and paid the full amount due thereon in cash and by giving his own note, but it afterwards appeared that the note so taken up was in a large part in renewal of an indebtedness antedating the guaranty and not covered thereby, it was *held,* his own note to that extent was without consideration, and on repayment of the remainder he was entitled in equity to its cancellation.

The weight of authority seems to be in accord with the above case and holds that where a party is induced to execute a note by the misrepresentation of material facts knowingly made by the payee in order to induce the maker to execute the note, it is without consideration and is a good defense to an action on the note. *House v. Martin,* 125 Ga. 642; *Conkling v. Vail,* 31 Ill. 166. And the misrepresentations must have been made at the time of the transaction, have been known to be such by the party making them, and must have been relied upon by the other party. *Clayton v. Cavender,* 1 Marv. (Del.) 191. But as a man is bound to use ordinary care and diligence to guard against fraud, *Clodfelter v. Hulett,* 72 Ind. 137, if he executes a note freely and voluntarily and well understands what he is doing, it cannot be said that such note is obtained by fraud and circumvention. *Metcalf v. Draper,* 98 Ill. App. 399. Where there is a total fraud in the consideration or in the manner of obtaining it, it will render the note void. *Shepard v. Hall,* 1 Conn. 329, and a partial want of consideration would reduce the amount of recovery *pro tanto. Stevens v. McIntire,* 14 Me. 14; *Hill v. Enders,* 19 Ill. 163.

CONSTITUTIONAL LAW—PERSONAL LIBERTY—RESTRICTIONS ON COSTUME. —HAMMER V. STATE, 89 N. E. 850 (IND.).—*Held,* that the right of one person to dress as he pleases, so long as it is not done in an offensive way, is modified by the rule that one person may not adorn himself so as to represent himself to be one whom he is not and thus assume a *status* to which he is not entitled, and an act prohibiting the wearing of the badge of a secret society by a nonmember is not invalid as interfering with such right.